

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LAURA L. HAY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Case No. 2:18-cv-742

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Chelsey M. Vascura

Defendant.

OPINION AND ORDER

Plaintiff Laura L. Hay objects to the Report and Recommendation issued by the Magistrate Judge finding that the decision of the Social Security Commissioner denying her disability benefits be affirmed. For the reasons that follow, the objections are **OVERRULED** and the Report and Recommendation is **ADOPTED**.

I.

Laura Hays raises one objection to the Report and Recommendation. She contends that the Administrative Law Judge improperly failed to consider a particular listed impairment, specifically Listing 5.08, which involves weight loss due to a digestive disorder. 20 C.F.R. Part 404, Subpart P, Appendix 1. For the listed impairment to apply, a claimant must demonstrate “despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.” Id. She contends that on four occasions of record, her body mass index was below 17.50.

The Administrative Law Judge did not specifically analyze Listed Impairment 5.08. The Magistrate Judge acknowledged that four BMI calculations of record were below 17.50. The

Magistrate Judge observed, however, that only two such calculations were made within the alleged period of disability. By the precise terms of Listed Impairment 5.08, the two BMI calculations must be below 17.50 and be observed “despite continuing treatment as prescribed.” Unlike many conditions causing disability, BMI calculations can vary, oftentimes because of effective treatment.

As the Magistrate Judge explained, the only doctor who treated the plaintiff’s digestive disorders was Dr. Levin. (R &R, p.5). Yet, his notes indicate “[Plaintiff] was last seen in my office back in 2012. She never followed back up as she was supposed to.” (R. 661). The only sub-17.50 BMI calculations noted during the claimed disability period were in the year 2014, during which the plaintiff was not receiving treatment for digestive disorders, as required by Listed Impairment 5.08. The plaintiff does not meet the criteria required under Listing 5.08.

II.

The Social Security Act provides that “the findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. Sec. 405(g). The Magistrate Judge correctly found that the plaintiff could not meet the requirements of Listed Impairment 5.08. Plaintiff’s claim of error in that the Administrative Law Judge did not analyze the listing is at most harmless, in that the requirements of the listed impairment are not satisfied by the record. The decision of the Commissioner is supported by substantial evidence and is not contrary to law.

III.

Based upon the forgoing, the Court adopts the Report and Recommendation of the Magistrate Judge. The specific errors cited by the plaintiff are overruled. The decision of the

Commissioner of Social Security denying disability benefits to the plaintiff is

AFFIRMED. This case is dismissed.

IT IS SO ORDERED.

3/30/2020
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE